

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DAVID MICHAEL GAILBREATH,)	
)	
Plaintiff,)	Case No. 1:10-cv-228-SJM-SPB
)	
v.)	
)	
WARDEN BRIAN COVERT, <i>et al.</i> ,)	
)	
Defendant.)	

MEMORANDUM JUDGMENT ORDER

Plaintiff's civil rights complaint was received by the Clerk of Court on September 16, 2010 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation, filed on July 20, 2011 [17], recommends that Defendants' motion to dismiss or, in the alternative, for summary judgment [11] be granted. Plaintiff was allowed fourteen (14) days from the date of service in which to file objections. Service was made on Plaintiff by certified mail at SCI-Albion, where he is incarcerated. No objections to the Report and Recommendation have been filed to date. After de novo review of the complaint and documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 9th Day of August, 2011;

IT IS ORDERED that the Defendants' motion to dismiss or, in the alternative, for summary judgment [11] shall be, and hereby is, GRANTED. The Report

and Recommendation of Magistrate Judge Baxter, filed on July 20, 2011 [17], is adopted as the opinion of this Court.

Accordingly, Plaintiff's claim premised upon the alleged denial of outdoor recreation during the month of March, 2010 as well as all of Plaintiff's claims premised upon conduct occurring during the time frame August 2007 to July 2008 shall be, and hereby are, DISMISSED pursuant to Fed. R. Civ. P. 12(b)(6). With respect to the remainder of Plaintiff's claims, JUDGMENT shall be, and hereby is, entered in favor of the Defendants and against Plaintiff, David Michael Gailbreath pursuant to Fed. R. Civ. P. 56(a).

s/ Sean J. McLaughlin

SEAN J. McLAUGHLIN
United States District Judge

cm: All parties of record

U.S. Magistrate Judge Susan Paradise Baxter